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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

13 PIERRE BRAILSFORD and KEVIN
 14 GILMORE, individually and on behalf of
 all others similarly situated,

Plaintiffs,

v.

17 JACKSON HEWITT INC.; TAX
 18 SERVICES OF AMERICA, INC.;
 DOES 1 through 100,

Defendants.

Case No. C 06-00700 CW

**STIPULATED PROTECTIVE
 ORDER**

Judge: Hon. Claudia Wilken

STIPULATED PROTECTIVE ORDER

To expedite the flow of discovery material, facilitate the prompt resolution of
 disputes over confidentiality, protect adequately material entitled to confidential treatment, and
 ensure that protection is afforded only to material so entitled, it is, pursuant to the Court's authority
 under Federal Rule of Civil Procedure 26(c) and with the consent of the parties, ORDERED:

- 1 1. **Non-Disclosure of Stamped Confidential Documents.** Except with the prior written
2 consent of the party or other person originally designating a document to be stamped as a
3 confidential document, or as hereinafter provided under this Order, no stamped confidential
4 document, nor the content of such document, may be disclosed to any person.
- 5 2. **Stamped Confidential Documents.** A "stamped confidential document" means any
6 document which bears the legend (or which shall otherwise have the legend recorded upon
7 it in a way that brings it to the attention of a reasonable examiner) "CONFIDENTIAL –
8 SUBJECT TO PROTECTIVE ORDER" to signify that it contains information believed to
9 be subject to protection under Federal Rule of Civil Procedure 26(c). Consistent with
10 paragraph 17, *infra*, inadvertent failure to designate a document as "confidential" at the time
11 of production may be corrected by supplemental written notice as soon as practicable. The
12 parties shall in good faith designate as "confidential" only those documents that contain "a
13 trade secret or other confidential research, development, or commercial information,"
14 pursuant to Federal Rule of Civil Procedure 26(c). For purposes of this Order, the term
15 "document" means all written, recorded, live testimony, or graphic material, whether
16 produced or created by a party or another person, whether produced pursuant to Rule 26(c),
17 subpoena, by agreement, or otherwise. Interrogatory answers, responses to requests for
18 admission or production, deposition transcripts and exhibits, pleadings, motions, affidavits,
19 and briefs that quote, summarize, or contain materials entitled to protection may be
20 accorded status as a stamped confidential document, but, to the extent feasible, shall be
21 prepared in such a manner that the confidential information is bound separately from that
22 not entitled to protection.
- 23 3. **Marking of Documents as Confidential.** When a party or other person or entity produces
24 confidential material of that party or other person or entity for inspection in this action, no
25 marking need be made by the party or entity in advance of the inspection. Upon selection
26 of specified documents or information for copying by a party, the party or other person or
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1 entity producing confidential material shall mark the copies. The parties shall treat as
2 confidential all documents produced for inspection until the copies are produced.

3 4. **Non-party Productions.** Counsel for parties to this Order will be given an opportunity to
4 review all documents and testimony produced or obtained through discovery from non-
5 parties to this action that the party, in good faith, believes may contain confidential or
6 proprietary information. The party, within 30 days of receiving such documents or
7 testimony from the producing non-party, shall designate the documents or testimony that
8 contains confidential material, and such documents or testimony shall be treated in
9 accordance with the terms of this Order.

10 5. **Permissible Disclosures.** Notwithstanding paragraph 1, stamped confidential documents
11 may be disclosed to:

12 a) counsel for the parties in this action who are actively engaged in the conduct of this
13 litigation; to the partners, associates, secretaries, paralegal assistants, and employees
14 of such counsel to the extent reasonably necessary to render professional services in
15 the litigation; to persons with prior knowledge of the documents or the confidential
16 information contained therein, and their agents; to court officials involved in this
17 litigation (including court reporters, persons operating video recording equipment at
18 depositions, and any special master appointed by the Court); and to employees and
19 experts of the party so designating the documents as confidential.

20 b) employees of third-party contractors involved solely in one or more aspects of
21 organizing, filing, coding, converting, storing, or retrieving data or designing
22 programs for handling data connected with these actions, including the performance
23 of such duties in relation to a computerized litigation support system; *provided*,
24 however, that in all such cases the individual to whom disclosure is to be made has
25 signed (similar to Exhibit A attached to this Order) containing –

26 1) a recital that the signatory has read and understands this Order;
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- 1 2) a recital that the signatory understands that unauthorized disclosures of the
2 stamped confidential documents may constitute contempt of court; and
3 3) a statement that the signatory consents to the exercise of personal
4 jurisdiction by this Court.

- 5 c) Experts retained by the parties, *provided*, however, that each expert executes a form
6 attached as Exhibit A containing the additional recital that the expert is not a
7 competitor, nor works for a competitor of the other party.

8 No party may disclose a stamped confidential document to a competitor (or agent of
9 competitor) of the designating party without the express written consent of the designating
10 party.

- 11 6. **Declassification.** Any party may challenge the classification of a document as
12 "confidential" if that party has a good faith basis to believe that the document should not be
13 so classified. The challenging party must provided written notice to the designating party
14 which: (1) identifies the document(s) that is the subject of the challenge; and (2) states the
15 grounds upon which the challenging party believes that the document(s) should not be
16 protected. Within 15 days of receiving such written notice, the designating party may move
17 the Court for an order that the document(s) is entitled to confidential treatment. If the
18 designating party opts not to file such a motion, when the 15-day notice period expires, the
19 document(s) shall not be protected under the terms of this Order. If a motion is filed,
20 however, the parties shall continue to treat the document(s) as protected under this Order
21 unless and until the Court rules that the document(s) is not subject to protection. The filing,
22 service, and notice requirements for such a motion shall be governed by the Local Rules for
23 the United States District Court for the Northern District of California. To maintain
24 confidential status, the designating party must show by a preponderance of the evidence
25 that there is good cause for the document(s) to have such protection.

1 **7. Confidential Information in Depositions.**

2 a) A deponent may during the deposition be shown and examined about stamped
3 confidential documents if the deponent already knows the confidential information
4 contained therein or if the provisions of paragraph 5(b) are complied with.
5 Deponents shall not retain or copy portions of the transcript of their depositions that
6 contain confidential information not provided by them or the entities they represent
7 unless they sign the form prescribed in paragraph 5(b). A deponent who is not a
8 party or a representative of a party shall be furnished a copy of this Order before
9 being examined about documents stamped confidential pursuant to this Order.

10 b) A party wishing to designate deposition testimony or deposition exhibits as
11 confidential may do so by making a statement to such effect on the record during
12 the course of the deposition. Additionally, parties may, within 30 days after
13 receiving a deposition transcript, designate pages of the transcript (and exhibits
14 thereto) as confidential, and provide written notice to the other parties that it has
15 done so by stating what exhibits or portion of the transcript are deemed confidential.
16 Until expiration of the 30 day period, the entire deposition will be treated as subject
17 to protection against disclosure under this Order. If no party or deponent timely
18 designates confidential information in a deposition, then none of the transcript or its
19 exhibits will be treated as confidential, unless such exhibits have previously been
20 identified as confidential; if a timely designation is made, the confidential portions
21 and exhibits shall be filed under seal separate from the portions and exhibits not so
22 marked. Declassification of the designated deposition transcript pages and exhibits
23 may be sought pursuant to the procedures of paragraph 6.

24 **8. Confidential Information at Hearings.** Subject to the Federal Rules of Evidence and/or
25 the Federal Rules of Civil Procedure, stamped confidential documents and other
26 confidential information may be offered in evidence at any court hearing. Any party who
27 wishes to introduce documents designated as confidential by another party must follow the
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1 procedures set forth in Northern District Local Rule 79-5, which include the filing of an
2 Administrative Motion. The Court will then determine whether the proffered evidence
3 should continue to be treated as confidential information and, if so, what protection, if any,
4 may be afforded to such information at the trial.

5 9. **Subpoena by Other Courts or Agencies.** If any court or an administrative agency
6 subpoenas or orders production of stamped confidential documents that a party has obtained
7 under the terms of this Order, that party shall immediately give written notice to counsel of
8 the party or other person who designated the document as confidential of the pendency and
9 content of such subpoena or order, together with a copy of such subpoena or order. The
10 parties shall cooperate with each other and keep each other informed regarding the status of
11 objections and/or response to such subpoena. As soon as practicable (and prior to
12 producing documents), the responding party shall make reasonable efforts to inform each
13 designating party as to the identity of documents it believes to be responsive.

14 10. **Filing.** Stamped confidential documents need not be filed with the clerk except when
15 required in connection with motions under the Federal Rules of Civil Procedure or other
16 matters pending before the Court. If filed, a party introducing evidence designated as
17 confidential by another party must comply with the requirements of Local Rule 79-5.

18 11. **Use.** Persons obtaining access to stamped confidential documents under this Order shall
19 use the information only for preparation and trial of this litigation (including appeals and
20 retrials), and shall not use such information for any other purposes, including business,
21 governmental, commercial, or administrative or judicial proceedings.

22 12. **Non-Termination.** The provisions of this Order shall not terminate at the conclusion of
23 this action. Within one hundred twenty (120) days after final conclusion of all aspects of
24 this litigation, stamped confidential documents and all copies of same (other than exhibits
25 of record) shall be returned to the party or person that produced such documents or, at the
26 option of the producer (if it retains at least one copy of the same), destroyed. All counsel of
27 record shall make certification of compliance herewith and shall deliver the same to counsel

1 for the party who produced the documents not more than one hundred fifty (150) days after
2 final termination of this litigation.

3 13. **Modification Permitted.** Nothing in this Order shall prevent any party or other person
4 from seeking modification of this Order or from objecting to discovery that it believes to be
5 otherwise improper.

6 14. **Responsibility of Attorneys.** The attorneys of record are responsible for employing
7 reasonable measures, consistent with this Order, to control duplication of, access to, and
8 distribution of copies of stamped confidential documents. Parties shall not duplicate any
9 stamped confidential document except working copies and for filing in court under seal.

10 15. **No Waiver.**

11 a) Review of the confidential documents and information by counsel, experts, or
12 consultants for the litigants in the litigation shall not waive the confidentiality of the
13 documents or objections to production.

14 b) The inadvertent, unintentional, or in camera disclosure of confidential documents
15 and information shall not, under any circumstances, be deemed a waiver, in whole
16 or in part, of any party's claims of confidentiality.

17 16. **Inadvertent Disclosure of Privileged Information.** In the event that a document
18 protected by the attorney-client privilege, work product doctrine, or other immunity is
19 inadvertently produced by any party to this proceeding, the party may request that the
20 document be returned. In the event that such a request is made, all parties to the litigation
21 and their counsel shall promptly return all copies of the document in their possession,
22 custody, or control to the producing party and shall not retain or make any copies. Such
23 inadvertent disclosure of a privileged document shall not be deemed a waiver with respect
24 to that document or other documents involving similar subject matter.

25 17. **Inadvertent Failure to Designate.** If a party fails to designate information as confidential,
26 such failure shall not constitute a waiver of the disclosing party's right to so designate such
27 information. In the event that such an inadvertent failure to designate occurs, the disclosing

1 party shall upon discovery of the inadvertent failure promptly notify in writing all parties
 2 known to have received the information in question, and provide them with appropriately
 3 marked substitute copies of the affected information. Until a receiving party receives such
 4 notification, any disclosure made by that party of the information to those not permitted by
 5 this Order to have access to the information shall not constitute a violation of this Order.
 6 However, upon receiving such notification, the receiving party shall request all persons to
 7 whom the information was disclosed by the receiving party but who are not permitted to
 8 have access to such information under the terms of this Order to return the information to
 9 the producing party. The receiving party shall also destroy all copies of the incorrectly
 10 labeled information and, if the party to whom the receiving party disclosed the information
 11 is permitted access to such information under this Order, replace them with the substitute
 12 copies provided by the disclosing party.

13 18. **General.** Nothing contained in this Confidential Order and no action taken pursuant to it
 14 shall prejudice the right of any party to contest the alleged relevancy, admissibility, or
 15 discoverability of the confidential documents and information sought.

16 19. **Consultation.** Prior to making any motion to this Court pursuant to or concerning the
 17 Order, counsel contemplating such a motion shall consult in good faith with opposing
 18 counsel in an effort to resolve the subject of the motion on a stipulated basis, subject to
 19 Court approval as necessary. Any motion to this Court shall state in said motion that the
 20 moving party has consulted with the opposing Counsel as required herein but that said
 21 consultation has been unsuccessful.

22 SO ORDERED THIS 20th day of September, 2006.
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 26 The Honorable Claudia Wilken
 27 United States District Judge
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1 AGREED AND STIPULATED:

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CHAVEZ & GERTLER LLP

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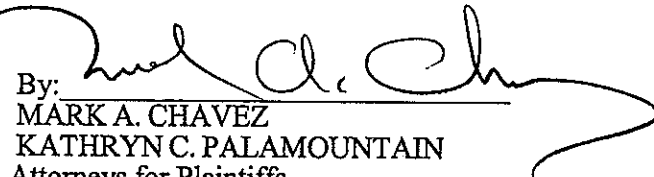
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Date: 9/8/06

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By: 
MARK A. CHAVEZ
KATHRYN C. PALAMOUNTAIN
Attorneys for Plaintiffs

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RODDY, KLEIN & RYAN

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Date: 9/8/06

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By: 
JOHN RODDY
Attorney for Plaintiffs

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RONALD FREDRICK & ASSOCIATES

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Date: 9/8/06

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By: 
RONALD FREDRICK
Attorney for Plaintiffs

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Date: 9/8/06

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BAILEY & GLASSER

By: 
BRIAN GLASSER
Attorney for Plaintiffs

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP

Date: September 8, 2006

By: Raoul Kennedy /mrk
RAOUL D. KENNEDY
JOREN S. BASS
Attorneys for Defendants

EXHIBIT "A"

Acknowledgement of Protective Order and Agreement To Be Bound

_____ states as follows:

1. I reside at _____ in the city and county of _____ and state of _____;
2. I have read and understand the Stipulated Protective Order dated _____, entered in the matter styled as *Brailsford v. Jackson Hewitt Inc. et al.*, Civil Action No. 06-700, pending in the United States District Court for the Northern District of California ("the *Brailsford* matter");
3. I (check one)
 - ☐ am engaged as a consultant or expert, or
 - ☐ have been interviewed by _____ on behalf of _____ in the preparation or conduct of the *Brailsford* matter;
4. **If I am engaged by a party as a consultant or expert, I affirm that I am not a competitor nor do I do work for a competitor of any other party to this matter.**
5. I agree to comply with and be bound by the provisions of the Stipulated Protective Order;
6. Counsel who has retained or consulted with me has explained the terms thereof;
7. I agree to consent to the personal jurisdiction of this Court for matters to the above-referenced case.
8. I will not divulge to persons other than those specifically authorized by paragraph 5 of the Stipulated Protective Order, and will not copy or use, except solely for purposes of this litigation, any confidential document or information as defined by the Stipulated Protective Order, except as provided therein.

(Signature of individual to whom disclosure will be made)